

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**ELMO PORTER,** §  
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                          §  
                          §  
                          §  
v.                          § **CIVIL CASE NO. 3:24-CV-2445-K-BK**  
                          §  
                          §  
**YOUNG CHEVROLET,** §  
                          §  
                          §  
                          §  
                          §  
                          §

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to [28 U.S.C. § 636\(b\)](#) and *Special Order 3*, this *pro se* civil action was referred to the United States magistrate judge for judicial screening, including the entry of findings and a recommended disposition. Upon review of the relevant pleadings and applicable law, this action should be summarily **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.

**I. BACKGROUND**

On September 27, 2024, Plaintiff Elmo Porter, a resident of Mesquite, Texas, filed a complaint against Young Chevrolet of Dallas, Texas. [Doc. 3 at 1](#). At best, the complaint is inartfully pled. Porter appears to sue for property damages to his car while it was at Young Chevrolet for service. [Doc. 3 at 1](#). Porter alleges that someone drove his car off the lot without permission, adding 950 miles. He also asserts that Young Chevrolet did not fix his car as promised. In the *Civil Cover Sheet*, Porter checks the boxes for federal question jurisdiction and

torts for the nature of suit code. [Doc. 3 at 2](#). Upon review, the Court concludes that subject matter jurisdiction is lacking. Thus, this action should be dismissed.<sup>1</sup>

## II. ANALYSIS

The Court should always examine, *sua sponte*, if necessary, the threshold question of whether it has subject matter jurisdiction. *See The Lamar Co., L.L.C. v. Mississippi Transp. Comm'n*, 976 F.3d 524, 528 (5th Cir. 2020); [FED. R. CIV. P. 12\(h\)\(3\)](#) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”). Unless otherwise provided by statute, a federal district court has subject-matter jurisdiction over (1) a federal question arising under the Constitution, a federal law, or a treaty, *see 28 U.S.C. § 1331*, or (2) a case in which there is complete diversity of citizenship between parties and the matter in controversy exceeds \$75,000, *see 28 U.S.C. § 1332*. “Under the well-pleaded complaint rule, ‘a federal court has original or removal jurisdiction only if a federal question appears on the face of the plaintiff’s well-pleaded complaint; generally, there is no federal jurisdiction if the plaintiff properly pleads only a state law cause of action.’” *Gutierrez v. Flores*, 543 F.3d 248, 251-52 (5th Cir. 2008). Further, the plaintiff, as the party asserting subject-matter jurisdiction, bears the burden of establishing that subject matter jurisdiction exists. *See Willoughby v. U.S. ex rel. U.S. Dep’t of the Army*, 730 F.3d 476, 479 (5th Cir. 2013).

The Court must also liberally construe pleadings filed by *pro se* litigants. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (noting *pro se* pleadings are “to be liberally construed” and “held to less stringent standards than formal pleadings drafted by lawyers”); *Cf. FED. R. CIV. P. 8(e)*

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<sup>1</sup>Because jurisdiction is lacking, the Court need not address the deficiencies in Plaintiff’s complaint and motion to proceed *in forma pauperis* and require compliance with the Court’s filing requirements.

(“Pleadings must be construed so as to do justice.”). Even under the most liberal construction, however, Porter has not alleged facts that establish federal question or diversity jurisdiction.

“A federal question exists only [in] those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *Singh v. Duane Morris LLP*, 538 F.3d 334, 337-38 (5th Cir. 2008) (citation and internal quotation marks omitted). Porter’s complaint, however, contains no factual allegations that support federal question jurisdiction. He alleges only state tort claims.

Further, Porter’s scant complaint, including the assertion that Defendant Young Chevrolet is located in Dallas, Texas (and, thus, presumably a citizen of this state), defeats subject-matter jurisdiction based on diversity. Doc. 3 at 2. See *Corfield v. Dallas Glen Hills LP*, 355 F.3d 853, 857 (5th Cir. 2003) (finding district court cannot exercise diversity jurisdiction if the plaintiff shares the same state of citizenship as any one of the defendants) (citation omitted).

Finally, because the complaint does not present an adequate basis for federal question jurisdiction and Porter cannot rely on diversity jurisdiction, the Court cannot exercise supplemental jurisdiction over any state-law claims Porter may be attempting to assert. 28 U.S.C. § 1337(a).

Accordingly, the complaint should be dismissed *sua sponte* and without prejudice for lack of subject matter jurisdiction.

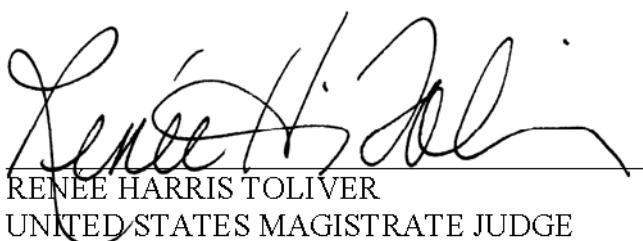
### **III. LEAVE TO AMEND**

Ordinarily, a *pro se* plaintiff should be granted leave to amend his complaint before dismissal, but leave is not required when he has already pled his “best case.” *Brewster v. Dretke*, 587 F.3d 764, 767-68 (5th Cir. 2009). As demonstrated *supra*, the facts as alleged in Porter’s

complaint show a lack of subject matter jurisdiction in this Court that is not curable by amendment. Thus, granting leave to amend would be futile and cause needless delay.

#### **IV. CONCLUSION**

For all these reasons, Porter's complaint should be **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction. *See FED. R. CIV. P. 12(h)(3).*  
**SO RECOMMENDED** on September 30, 2024.



RENEE HARRIS TOLIVER  
UNITED STATES MAGISTRATE JUDGE

#### **INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b).* An objection must identify the finding or recommendation to which objection is made, the basis for the objection, and the place in the magistrate judge's report and recommendation the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n, 79 F.3d 1415, 1417 (5th Cir. 1996), modified by statute on other grounds, 28 U.S.C. § 636(b)(1)* (extending the time to object to 14 days).